

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

In re Scotts EZ Seed Litigation : 12-CV-4727 (VB)
:
:
:
:
----- X

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Shawn Patrick Regan, with Exhibits 1-2 attached, the accompanying Memorandum of Law, and all prior pleadings and proceedings had herein, Defendants Scotts Miracle-Gro Company, Inc., Scotts Company LLC, and Lowe's Home Centers, Inc. hereby move this Court for an order dismissing: (i) Counts I and VII in their entirety, (ii) Counts II, III, IV, V, VIII, IX, X, XII except insofar as Plaintiffs claim that EZ Seed is represented as growing "50% thicker grass with half the water" but actually "doesn't work," (iii) Counts VI and XI as to Scotts, and (iv) Counts II, III, IV, V, VI, VIII, IX, X, and XI as to Lowe's.

Dated: October 9, 2012
New York, NY

By: /s/ Shawn Patrick Regan
Shawn Patrick Regan
Melissa L. Levitt
HUNTON & WILLIAMS LLP
200 Park Avenue
New York, New York 10166
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
Email: sregan@hunton.com
Email: melvitt@hunton.com

- and -

Samuel Danon (*pro hac vice*)
Jason B. Sherry
HUNTON & WILLIAMS LLP
1111 Brickell Avenue, Suite 2500
Miami, FL 33131
Telephone: (305) 810-2500
Fascimile: (305) 810-2460
Email: sdanon@hunton.com
Email: jsherry@hunton.com

Counsel for Defendants
Scotts Miracle-Gro Company, Inc.
Scotts Company LLC, and
Lowe's Home Centers, Inc.

TO: Scott A. Bursor, Esq.
Joseph I. Marchese, Esq.
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, New York 10019
(212) 989-9113
scott@bursor.com
jmarchese@bursor.com

- and -

Antonio Vozzolo, Esq.
Christopher Marlborough, Esq.
Faruqi & Faruqi, LLP
369 Lexington Avenue
10th Floor
New York, New York 10017
(212) 983-9330
avozzolo@faruqilaw.com
cmarlborough@faruqi.com

Attorneys for Plaintiffs

S. Stewart Haskins, Esq.
Zachary A. McEntyre, Esq.
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 572-4600
shaskins@kslaw.com
zmcentyre@kslaw.com

Attorneys for The Home Depot, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on October 9, 2012, I served a copy of foregoing, on all counsel of record at the addresses listed below, by filing same with the Court's CM/ECF system.

/s/ Shawn Patrick Regan
Shawn Patrick Regan

TO: Scott A. Bursor, Esq.
Joseph I. Marchese, Esq.
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, New York 10019
(212) 989-9113
scott@bursor.com
jmarchese@bursor.com

- and -

Antonio Vozzolo, Esq.
Christopher Marlborough, Esq.
Faruqi & Faruqi, LLP
369 Lexington Avenue
10th Floor
New York, New York 10017
(212) 983-9330
avozzolo@faruqilaw.com
cmarlbrough@faruqi.com

Attorneys for Plaintiffs

S. Stewart Haskins, Esq.
Zachary A. McEntyre, Esq.
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 572-4600
shaskins@kslaw.com
zmcentyre@kslaw.com

Attorneys for The Home Depot, Inc.